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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL J. CHAMBERS and MICHAEL KIESSLING

Appeal 2009-0099
Application 10/695,603¹
Technology Center 2600

Decided:² February 4, 2009

Before KENNETH W. HAIRSTON, JOHN A. JEFFERY,
and MARC S. HOFF, *Administrative Patent Judges*.

HAIRSTON, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ Application filed October 28, 2003. The real party in interest is Agere Systems, Inc.

² The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1 to 21. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

The Invention

Appellants' invention is directed to a system, method, and mobile telephone for interpreting an image taken of part of an article by a camera of the phone to retrieve information about the article from multiple databases/distributors (Fig. 1; Abs.; Spec. 1, and 4-5). The image can be interpreted using either software resident in a remote database (*see* claims 1 and 11), or software loaded on the phone (*see* claims 11 and 21).

Claim 1, reproduced below, is representative of the subject matter on appeal:

1. A system for using a mobile telephone to retrieve information about an article provided by a first distributor, comprising:

a camera, associated with said mobile telephone, that records an image of at least a portion of said article; and

a database, remote from said mobile telephone and synchronized with at least another database associated with a second distributor of said article, wherein said database interprets said image to identify said article and, based thereon, supplies information about said article from said database and said another database to said mobile telephone.

The Rejections

The Examiner relies upon the following as evidence of unpatentability:

Lev	US 2002/0102966 A1	Aug. 1, 2002
Ogasawara	US 6,512,919 B2	Jan. 28, 2003

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Marggraff	US 6,750,978 B1	Jun. 15, 2004 (filed Aug. 4, 2000)
Rehbein	US 2005/0017453 A1	Jan. 27, 2005 (filed Feb. 2, 2004) ³
Swartz	US 2005/0040230 A1	Feb. 24, 2005 (effectively filed Nov. 21, 2001)
Simon	US 6,974,078 B1	Dec. 13, 2005 (filed Sep. 28, 1999)

The following rejections are before us for review:

(i) The Examiner rejected claims 1 to 6, 8, 11, 12, 14 to 18, and 21 under 35 U.S.C. § 103(a) as being unpatentable over Ogasawara and Simon.

(ii) The Examiner rejected claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Ogasawara and Simon, further in view of Marggraff.

(iii) The Examiner rejected claims 9 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Ogasawara and Simon, further in view of Rehbein.

(iv) The Examiner rejected claims 10 and 20 under 35 U.S.C. § 103(a) as being unpatentable over Ogasawara and Simon, further in view of Swartz and Lev.

³ We note that although Appellants' application filing date of October 28, 2003 is prior to Rehbein's filing date of February 2, 2004, Appellants have not asserted that Rehbein is *not* prior art, and the Examiner has not made a determination as to whether Rehbein meets the requirements for establishing entitlement to the benefit of the October 25, 2001, filing date of Rehbein's continuation-in-part application No. 10/144,513, which is now U.S. Patent No. 6,685,188. *See* MPEP 201.11.

(v) The Examiner rejected claim 13 under 35 U.S.C. § 103(a) as being unpatentable over Ogasawara and Simon, further in view of Lev.

Rather than repeat the arguments of Appellants or the Examiner, we refer to the Briefs⁴ and the Answer⁵ for their respective details. In this decision, we have considered only those arguments actually made by Appellants. Arguments which Appellants could have made but did not make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

FINDINGS OF FACT

Findings of fact throughout this decision are supported by a preponderance of the evidence of record. The relevant facts include the following:

Appellants' Disclosure

1. As indicated *supra*, Appellants describe and claim a system (Fig. 1), method, and mobile telephone 100 for interpreting an image taken of part of an article (*i.e.*, barcode 201) by a camera 101 of the phone to retrieve information about the article from multiple databases/distributors 400 (Fig. 1; Abs.; Spec. 1, and 4-5). The image can be interpreted using either software resident in a remote database (*see* claim 1), or software loaded on the phone (*see* claim 11).

⁴ We refer to the Appeal Brief filed February 23, 2007, and the Reply Brief filed August 29, 2007, throughout this opinion.

⁵ We refer to the Examiner's Answer mailed June 29, 2007, throughout this opinion.

2. Appellants recognize the need “to retrieve information regarding an article based on coded data gathered from the article, particularly in an easy, low cost and fast manner” (Spec. 3, para. 0009).

Ogasawara

3. Ogasawara teaches a system (Fig. 1), method (Fig. 13), and mobile telephone (218 in Fig. 14) for interpreting an image taken of part of an article (*i.e.*, barcode 31 on product 33) by a camera 236 of the phone 218 to retrieve information about the article from multiple databases (store server 10 and remote server 26) (*see* col. 3, ll. 13-14). The image can be interpreted using either software resident in a remote database (*see* col. 5, ll. 53-59; col. 18, ll. 23-37), or software which is downloaded to the phone (*see* col. 12, ll. 23-26; col. 18, ll. 10-22).
4. Ogasawara also recognizes the need for reducing the investment cost of retrieving product information from a remote database by using a mobile telephone having a camera instead of a barcode scanner, thus reducing the overall cost to the customer/shopper (col. 2, ll. 15-57).

Simon

5. Simon teaches a system, method, and mobile telephone (Fig. 1; mobile telephone 10) for retrieving and displaying product information (*e.g.*, barcode on product 14) using multiple servers 30, databases 32, and barcode libraries 34 (col. 3, ll. 18-25 and 34-37; and col. 3, l. 61-67 to col. 4, l. 3)
6. Simon discloses that there is a need in the art to provide a mobile telephone that allows retrieval of product-related information over the Internet from multiple remote databases (col. 1, ll. 8-41; col. 3, ll. 18-25). Simon discloses

that the product-related information desirable to customers can include: product reviews, coupons, competitive pricing information from multiple merchant databases, locations of merchants, related advertising, recall information, nutritional information, etc. (col. 1, l. 64 to col. 2, l. 7; col. 3, l. 47 to col. 4, l. 53).

Marggraff

7. Marggraff teaches providing product information acoustically (col. 23, l. 55 to col. 24, l. 3).

Rehbein

8. Rehbein teaches providing product pricing information in two currencies (Fig. 21; para. 0023).

Swartz

9. Swartz teaches a shopping system having a memory for storing data pertaining to a plurality of articles or products (para. 0211).

Lev

10. Lev teaches an imaging device capable of capturing, storing, and sending a video sequence of multiple single or multiple images (para. 0097) and a direct radio link using a WLAN or Bluetooth standard (para. 0061).

ISSUE

The Examiner rejected all claims 1 to 21 using the combination of Ogasawara and Simon (*see* rejections (i) – (v) discussed *supra*; Ans. 4-22).

Appellants primarily argue that Simon teaches away from Ogasawara, there is no motivation to combine these two references, and therefore the combination of

Ogasawara and Simon fails to teach or suggest a system, method, and mobile telephone for interpreting an image of part of an article taken by the telephone's camera to retrieve information about the article from multiple databases/distributors (App. Br. 7-8, 10-11; Reply Br. 2-4).

Thus, the issue is: Did the Appellants demonstrate that the Examiner erred in determining that Ogasawara and Simon (i) are properly combinable, and (ii) teach or suggest the system, method, and mobile telephone for interpreting an image of part of an article taken by the telephone's camera to retrieve information about the article from multiple databases/distributors, as recited in independent claims 1, 11, and 21?

PRINCIPLES OF LAW

A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant. The degree of teaching away will of course depend on the particular facts; in general, a reference will teach away if it suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the applicant.

In re Gurley, 27 F.3d 551, 552-53 (Fed. Cir. 1994).

The test for obviousness is what the combined teachings of the references would have suggested to the artisan. Accordingly, one can not show nonobviousness by attacking references individually where the rejection is based on a combination of references. *In re Keller*, 642 F.2d 413, 426 (CCPA 1981).

The Examiner bears the initial burden of presenting a prima facie case of

obviousness, and Appellants have the burden of presenting a rebuttal to the prima facie case. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006).

ANALYSIS

We agree with the Examiner's findings of fact and conclusions of obviousness with respect to claims 1 to 21 (Ans. 4-22), and adopt them as our own, along with some amplification of the Examiner's explanation of the teachings of Ogasawara (*see* Findings of Fact 3 and 4).

Appellants' arguments that Simon teaches away from Ogasawara are unpersuasive since a person of ordinary skill, upon reading Ogasawara, would be encouraged to follow the path set out in Simon (of using multiple databases), and would not be led in a direction divergent from the path that was taken by Appellants. *Gurley*, 27 F.3d at 552-53. Indeed, Appellants' invention, Ogasawara, and Simon are all related to method and systems using mobile telephones to read barcodes which are then used to retrieve product information from a database (*see* Findings of Fact 1, 3, 5, and 6). Furthermore, Appellants' invention, Ogasawara, and Simon are all concerned with reducing costs to customers/users who shop using a mobile telephone to retrieve product-related and cost information (Findings of Fact 2, 4, and 6). One of ordinary skill in the art looking at Ogasawara's electronic shopping system and mobile telephone, which seeks to minimize costs to the customer (Finding of Fact 4; col. 2, ll. 52-57), would have been motivated to follow Simon's disclosure of allowing a customer/shopper to use their phone to

retrieve pricing and other information from multiple database sources to assist shoppers in saving money (*see* Finding of Fact 6), producing the result sought by the Appellants of retrieving product information in an easy, low-cost, fast manner (Finding of Fact 2), which also saves customers' money.

The Examiner is correct that Ogasawara and Simon are from the same field of endeavor (Ans. 5). Both Ogasawara and Simon relate to communication systems and method which use mobile telephones (*see* 18 in Fig. 1 of Ogasawara and 10 in Fig. 1 of Simon) to read barcodes (*i.e.*, part of an image of an article; *see* 31 in Fig. 1 of Ogasawara and 14 in Fig. 1 of Simon) and then retrieve information about the article from servers (*see* servers 10 and 26 in Fig. 1 of Ogasawara and servers 30 and 40 in Fig. 1 of Simon) (*see* Findings of Fact 3, 5, and 6). We agree with the Examiner that it would have been obvious to one of ordinary skill in the art to modify Ogasawara with the multiple database teaching of Simon in order to perform competitive pricing and provide product information to customers (Ans. 6, 10, and 14). Accordingly, we are not persuaded by Appellants' argument that the Examiner erred in combining Ogasawara with Simon.

Appellants assert that *Simon* fails to teach interpreting part of an image of an article (*e.g.*, a barcode) to identify the article (App. Br. 8-9). However, *Ogasawara* teaches interpreting part of an image of an article (*i.e.*, a barcode 31 on the article 33) (Finding of Fact 3), and was relied on by the Examiner as teaching this limitation as recited in claims 1, 11, and 21 (Ans. 4-6, 9-10, and 13-14). Appellants cannot show non-obviousness by attacking references individually (*i.e.*, Simon) where rejections are based on a combination of references (*i.e.*, Ogasawara and Simon). *Keller*, 642 F.2d at 426. In the instant case, Appellants' argument

that *Simon* does not teach the interpreting limitation is unpersuasive, since *Ogasawara* was relied upon by the Examiner as teaching this limitation (*see* Ans. 4-5, 9, and 13 *citing* col. 6, ll. 46-52 of *Ogasawara*).

Appellants' arguments have not persuaded us of error in the Examiner's rejections of claims 1 to 21 under 35 U.S.C. § 103(a) as being unpatentable over various combinations of references (all using *Ogasawara* and *Simon* as base references). Appellants' arguments throughout the briefs do not convince us that *Simon* teaches away from *Ogasawara*. Appellants' arguments with respect to claims 3, 7, 9, 10, 13, 19, and 20 are addressed below.

With regard to claim 3, Appellants argue that *Ogasawara* and *Simon* “do not teach or suggest the information includes a price of the article from the first distributor and the second distributor” and that *Ogasawara* relates to shopping in a single store and thus the combination is improper (App. Br. 11). Because *Ogasawara* provides information on the price of an article from a first distributor (*e.g.*, the retailer, store, or seller of goods and services), because *Simon* provides information on the price of an article from a second distributor (*e.g.*, competitive pricing information and pricing data from product information libraries), and because there would be motivation to make the combination as discussed above, we are not persuaded by this line of argument.

With regard to claim 7, Appellants argue that *Marggraff* fails to cure the deficiencies of *Ogasawara* and *Simon*, and simply relates to “interacting with or augmenting print media” (App. Br. 15). To the contrary, we find that *Marggraff* teaches providing information to a user in an acoustic manner as recited by claim 7 (Finding of Fact 7).

With regard to claims 9 and 19, Appellants argue that Rehbein fails to cure the deficiencies of Ogasawara and Simon, and simply relates to “an electronic device that uses a computer application that allows parties the use of transactional flash cards on digital screens” (App. Br. 16). To the contrary, we find that Rehbein teaches transmission of products pricing information in multiple currencies (Finding of Fact 8).

With regard to claims 10 and 20, Appellants argue that Swartz and Lev fail to cure the deficiencies of Ogasawara and Simon, and that the combination of Ogasawara, Simon, Swartz, and Lev fails to teach or suggest the invention recited in claims 10 and 20 (App. Br. 16-17). However, we find that Swartz and Lev teach the limitations asserted by the Examiner (*see* Findings of Fact 9 and 10).

Appellants cannot show non-obviousness by attacking references individually where rejections are based on a combination of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (citing *Keller*, 642 F.2d at 426). In the instant case, we are not persuaded by Appellants’ argument that Swartz and Lev do not teach or suggest the missing features of Ogasawara and Simon of interpreting an image of an article (App. Br. 16), since the base reference, Ogasawara, was relied upon as teaching this limitation. Therefore, the combination of Ogasawara, Simon, Swartz, and Lev meets the limitations recited in claims 10 and 20.

With regard to claim 13, Appellants argue that Lev fails to cure the deficiencies of Ogasawara and Simon, and simply relates to “interacting with or augmenting print media” (App. Br. 17). To the contrary, we find that Lev teaches using a direct radio link conforming to the Bluetooth or WLAN standards (Finding of Fact 10), and therefore meets the recited limitation of claim 13.

Appellants do not separately argue the limitations of claims 2, 4 to 6, 8, 12, and 14 to 18 apart from merely asserting that these claims recite further features that are not taught or suggested by cited prior art (App. Br. 10-18). Such conclusory assertions, without supporting explanation or analysis particularly pointing out errors in the Examiner's reasoning, fall well short of persuasively rebutting the Examiner's prima facie case of obviousness. *Id.*

Regarding the obviousness rejection of: claim 7 over Ogasawara, Simon, and Marggraff (Ans. 15-16); claims 9 and 19 over Ogasawara, Simon, and Rehbein (Ans. 16-18); claims 10 and 20 over Ogasawara, Simon, Swartz, and Lev (Ans. 18-21); and claim 13 over Ogasawara, Simon, and Lev (Ans. 21-22), we find that Appellants have not persuasively rebutted the Examiner's prima facie case of obviousness for these claims, but merely contend that the additional references fail to cure the previously-noted deficiencies of Ogasawara and Simon as discussed above (App. Br. 15-18).

In our view, Ogasawara and Simon teach or suggest all of the limitations recited in Appellants' independent claims 1, 11, and 21 as well as dependent claims 2 to 6, 8, 12, and 14 to 18. In addition, Ogasawara and Simon modified by Marggraff (*see rejection (ii) supra*), Rehbein (*see rejection (iii) supra*), Swartz and Lev (*see rejection (iv) supra*), and Lev (*see rejection (v) supra*) teach or suggest all of the limitations recited in Appellants' dependent claims 7, 9 and 19, 10 and 20, and 13, respectively. For all of the above reasons, we sustain each of the Examiner's rejections (*see rejections (i)-(v) listed supra*).

CONCLUSIONS OF LAW

Appellants have not shown that the Examiner erred in determining that Ogasawara and Simon are (i) properly combinable and (ii) teach or suggest the system, method, and mobile telephone for interpreting an image taken of part of an article by a camera of the phone to retrieve information about the article from multiple databases/distributors, as recited in independent claims 1, 11, and 21. Neither have Appellants shown that the Examiner erred in determining that the dependent claims would have been obvious to ordinarily skilled artisans over the collective teachings of the cited prior art references.

ORDER

The decision of the Examiner to reject claims 1 to 21 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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gvw

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